

# EXHIBIT E

**In the Matter Of:**

NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY

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**VIDEOTAPED DEPOSITION OF BARBARA WAGNER**

*August 30, 2016*

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MASSACHUSETTS

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:  
IN RE: NEW ENGLAND :  
COMPOUNDING PHARMACY, INC. :  
PRODUCTS LIABILITY LITIGATION: MDL NO. 2419  
:  
This Documents Relates to: : Master Docket  
: 1:13-md-02419-RWZ  
All Cases against the Box :  
Hill Defendants :  
:  
-----X

VIDEOTAPED DEPOSITION OF  
BARBARA WAGNER

AUGUST 30, 2016  
10:32 a.m.

Peter G. Angelos, P.C.  
One Charles Center  
100 N. Charles Street  
20th Floor  
Baltimore, MD 21201

Before: Linda Bahur, RPR



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# I N D E X

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(Attached to the transcript)

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P R O C E E D I N G S

THE VIDEOGRAPHER: This is tape number one to the videotape deposition of Barbara Wagner, taken in the matter of New England Compounding Pharmacy, Inc., Product Liability Litigation. The deposition is being held at the Law Offices of Peter G. Angelos. This deposition is being held on August 30, 2016. My name is Marcus Sobczak and I'm the videographer. The court reporter is Linda Bahur.

Counsel, please introduce yourselves for the record and the court reporter will then swear the witness in, then we can proceed.

MS. KASPUTYS: I'm Patricia Kasputys, Law Offices of Peter Angelos, and I'm here on behalf of seven of the plaintiffs who have claims in this matter against Box Hill Surgery Center and Dr. Ritu T. Bhambhani. And the clients whom we represent include three people who died as a result of receipt of contaminated injections of methylprednisolone acetate and four people who are living with fungal meningitis.

MS. HOUSTON: My name is Sharon Houston, Law Offices of Peter Angelos, and I represent multiple plaintiffs described.

MR. COREN: Good day. Michael Coren. I represent one of the plaintiffs in the Box Hill cases.



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1 I also represent today other plaintiffs in the  
2 multi-district litigation.

3 MS. STEINER: Catherine Steiner on behalf of  
4 Box Hill Surgery Center, Dr. Ritu Bhambhani, and Ritu  
5 Bhambhani, M.D., LLC.

6 MS. MARUCCI: Ashley Marucci with Eccleston  
7 and Wolf on behalf of the deponent, Barbara Wagner.

8 MR. KRAUSE: Scott Krause, also on behalf of  
9 the witness.

10 Whereupon,

11 BARBARA WAGNER

12 having been first duly sworn, was examined and testified  
13 as follows:

14 EXAMINATION BY MS. KASPUTYS:

15 Q Good morning again, Ms. Wagner. As I've  
16 said, I'm Patricia Kasputys, also known as Patty  
17 Kasputys, and I'm here, as you know, to take your  
18 deposition today to ask you a series of questions, and I  
19 would like to begin with asking you whether you have  
20 ever been deposed in the past.

21 A No.

22 Q So with respect to the general rules of  
23 deposition, I'd like to go over -- let me rephrase that.

24 I'd like to go over some of the rules for a  
25 deposition.



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1 Q Okay. So when the subpoena asked you to  
2 bring with you to this deposition documents on  
3 Attachment A, which is this page, this is a page that  
4 you have not reviewed?

5 A I actually -- when I received this, I went  
6 through and looked at the discovery. I had already  
7 turned in discoveries. And when I went through this, I  
8 pulled everything that was related to Box Hill. So I  
9 did submit those. My apologies.

10 Q When you say you had submitted them,  
11 submitted them in response to request for production of  
12 documents in this litigation?

13 MR. KRAUSE: I'll object to the form of the  
14 question. You can answer.

15 A I'm not sure. So you're talking about Box  
16 Hill, right?

17 Q I am.

18 A Anything -- the way I read this, I took  
19 everything that was related to anything that we had  
20 anything to do with Box Hill is what I turned in.

21 Q And who did you turn that in to?

22 A I thought -- did you not get it? I turned it  
23 in to my manager and I thought I made copies.

24 MS. KASPUTYS: Do you have any documents that  
25 Ms. Wagner has turned in that relate to Box Hill Surgery



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1 Center?

2 MR. KRAUSE: As we advised you prior to Ms.  
3 Brockmeyer's deposition and this deposition, Ms. Wagner  
4 is appearing here today pursuant to a subpoena issued to  
5 her individually, not in a corporate capacity. Ms.  
6 Wagner does not individually possess any documents  
7 responsive to the request.

8 Certainly if Harford County Surgical Center  
9 may possess documents, but it was our position that we  
10 were not obligated to produce any records in response to  
11 a subpoena issued to Ms. Wagner individually. She is  
12 not here as a corporate designee.

13 BY MS. KASPUTYS:

14 Q Ms. Wagner, were the documents that you put  
15 together and gave to your general manager documents that  
16 were in your custody and control at Harford County  
17 Ambulatory Surgery Center?

18 MR. KRAUSE: Object to the form of the  
19 question.

20 A I'm not sure what you mean.

21 Q With respect to the documents that you pulled  
22 together that relate to Box Hill Surgery Center, were  
23 those documents that in your capacity as an employee of  
24 Harford County Surgery Center were in your custody?

25 MR. KRAUSE: Object to the form of the



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1 question.

2 A They were in the office. They weren't per se  
3 my documents.

4 Q And you do have access to those documents,  
5 correct?

6 A Yes. They're copied.

7 MS. KASPUTYS: I would ask that Counsel  
8 produce those documents. They're relevant to the  
9 subpoena and there was, as you know, filed by you a  
10 motion first to quash the deposition of Ms. Wagner and  
11 then a motion for protective order filed, and that was  
12 ruled on by Judge Boal. And the documents that were  
13 narrowed from the original request should have been  
14 produced today. And I'm going to ask that this  
15 deposition be kept open so that we can continue to  
16 pursue the documents that we believe that we're  
17 rightfully entitled to pursuant to the subpoena directed  
18 to this witness.

19 MR. KRAUSE: Counsel, I disagree with your  
20 position from a legal perspective. Our motion for a  
21 protective order was with respect to the scope of what  
22 we believed should be permissible during the course of  
23 this deposition.

24 MS. KASPUTYS: Go ahead. If you may. Go  
25 ahead, Mike.



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1 A What do you mean by exchange?

2 Q Well, actually -- well, we'll get to that a  
3 little further in the deposition.

4 But what I am speaking of, I'll tell you now,  
5 if there were medications, i.e., methylprednisolone  
6 acetate preservative-free that was transferred from the  
7 inventory at Harford County Ambulatory Surgery Center to  
8 Box Hill, were there document related to such an  
9 exchange of medication?

10 A Yes.

11 Q And those documents are among those that you  
12 turned over to the general manager --

13 A Yes.

14 Q -- at Harford County Surgery Center?

15 A Nurse administrator.

16 Q The nurse administrator. Who is the nurse  
17 administrator?

18 A Kim Merrill.

19 Q I'd like to ask you a few questions regarding  
20 what you did to prepare for today's deposition. Did you  
21 meet with anyone in advance of today's deposition? And  
22 I'm not asking you to tell me of the content of  
23 conversations that you had with counsel. But I'm asking  
24 you whether you met with counsel.

25 A Yes, I have.



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1           A     I do. It was a great day. No more call, no  
2 more weekends.

3           Q     What was your initial title when you began to  
4 work at Harford County Ambulatory Surgical Center?

5           A     Certified Surgical Technologist.

6           Q     Who was your supervisor?

7           A     Linda Terzigni.

8           Q     Is Ms. Terzigni a registered nurse or is she  
9 a --

10          A     She is.

11          Q     Okay. And I'm sorry. Your title was  
12 Certified Surgical?

13          A     Technologist.

14          Q     Technologist. And could you describe what  
15 your duties and responsibilities were at Harford County  
16 Ambulatory Surgical Center as a Certified Surgical  
17 Technologist?

18          A     Well, I have to anticipate the surgeon's  
19 needs. We -- the surgeons establish their preferences.  
20 During surgery, you anticipate the surgeon's needs. You  
21 make sure they have exposure on the area they're  
22 working. You're responsible to be aware of hemostasis  
23 and you have to be efficient. And you also follow a  
24 septic technique.

25          Q     Is -- are your duties in the operating room



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1 as a surgical technologist equivalent to -- I guess --  
2 let me rephrase that.

3 Are you an assistant, then, to the surgeon in  
4 the operating room?

5 A In a way, yes, because I have to set the  
6 table. I have to make sure all the supplies are there.  
7 I make sure that the equipment is working and I make  
8 sure that any biological testing that is done is done in  
9 the morning. That's an order we do every day.

10 Q When you first began working as a surgical  
11 tech at Harford County Ambulatory Surgical Center, how  
12 many surgeons were working there? If you remember.

13 A Well, I would say at least nine, but I'm sure  
14 there's a few more.

15 Q Were the procedures done from working with  
16 these nine or possibly nine surgeons at Harford County  
17 Ambulatory Surgery Center or were they done at other  
18 facilities?

19 A No. They were done at the surgery center.

20 Q At what point did you meet Andrew Vickers?  
21 You said earlier that you know him.

22 A I don't even know when he started at Harford  
23 County. He's the PACU nurse. He does recovery room. I  
24 don't work with him in the OR.

25 Q Okay. Did you work with him in any capacity



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1 STATE OF MARYLAND )

2 COUNTY OF HARFORD )

3

4

5 I, Linda Bahur, a Notary Public of the State of  
6 Maryland, do hereby certify that the deposition of  
7 BARBARA WAGNER took place before me at the time and  
8 place herein set out.

9 I further certify that the proceeding was  
10 recorded stenographically by me and this transcript is a  
11 true record of the proceedings.

12 I further certify that I am not of counsel to  
13 any of the parties, nor an employee of counsel, nor  
14 related to any of the parties, nor in any way interested  
15 in the outcome of this action.

16

17

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*Linda M. Bahur*

Linda M. Bahur

Linda M. Bahur

My commission expires 8/27/2019

Dated: September 8, 2016



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